

CHAPTER 13. STATE AND LOCAL LAWS AND REGULATIONS GOVERNING PHA PROCUREMENT

13.1 General

In addition to federal law and regulations, PHAs are governed by a wide assortment of state and local requirements. In general, where these rules conflict, the more stringent law or rule applies. For example, the Federal statutory limit on small purchases is \$100,000. That does not prohibit a State from imposing a more stringent limit, e.g., \$25,000, on small purchases. A PHA governed by that State's law would comply with the \$25,000 limit.

HUD requires a standard form of Cooperation Agreement between a PHA and the Local Governing Body (LGB) under which the LGB is required to furnish the same public facilities and services to the PHA and its tenants as to other dwellings. The LGB is required to cooperate with the PHA in the development and administration of its projects, to accept dedications of lands for roads, alleys and sidewalks and to provide water, storm and sanitary storm services for which the PHA shall pay the same amount as private owners. These arrangements may require some flexibility in complying with PHA procurement requirements.

This chapter discusses the relationship between these federal, state, and local rules, as they relate to procurement, and also lists suggested resources and other guidance to help PHAs remain current in these various requirements.

13.2 Exceptions to Local Pre-emption

In general, a PHA must comply with state or local procurement rules if they are more stringent. Two exceptions include:

- A. **Geographic Preferences.** Although some States impose certain geographic preference restrictions in the evaluation of offers, **24 CFR 85.36(c)(2)** preempts such laws by prohibiting the use of geographic restrictions unless expressly required or encouraged by Federal law.
- B. **State Prevailing Wage Requirements.** Federal wage determinations (either Davis-Bacon or HUD-Determined Wage Rates) preempt any State prevailing wage rate when the State wage rate is higher than the applicable Federally-imposed wage rate (**24 CFR Part 965**). Appropriate Federal preemption language is included in the labor standards clauses found in forms HUD-5370, 5370-EZ, and 5370-C.

13.3 State Law

Typically, PHAs are governed by two sets of state regulations. One set is called "state-enabling legislation" and the second is a separate set of state statutes or codes.

- A. State public housing laws generally describe the creation and operation of PHAs within the state (also referred to as "Local Housing Authorities," "Municipal Housing Authorities," "Regional Housing Authorities," "County or City Housing Authorities," "Consolidated Housing Authorities," and in some cases a "State PHA"). Some State public housing laws also provide guidance on specific operational tasks, such as procurement actions with which PHAs must comply.
- B. The separate State statutes or codes sometimes apply to local governments, including PHAs, but in other states, the State statutes or codes do not apply.

- C. The laws that enable the establishment of public housing authorities and other State requirements that impact procurement activities differ from state to state, as follows:
 - 1. State-enabling legislation may include specific guidance on how the various procurement regulations apply to PHA contracts within that State; or
 - 2. The State law creating public housing may be silent on procurement, and:
 - a. The State procurement code applies to units of local government, including PHAs;
 - b. The State procurement code does not apply to local governments, including PHAs;
 - c. Adoption of the state procurement statutes is not mandatory for units of local government;
 - d. A State's procurement code generally does not apply to PHAs because they are not State agencies; however, specific clauses in the regulations may apply; and
 - e. The State procurement code may mandate certain practices but specifically exempt PHAs from one or more of the requirements.
- D. Some States have passed laws on procurement but specifically exempt contracts awarded with Federal funds. Also, in some cases, procurement laws may be waived if the PHA makes a written request and provides sufficient justification for not following the State law.
- E. Some States have passed very detailed "Procurement Codes" based on the American Bar Association's (ABA) Model Procurement Code for State and Local Governments, which apply to local governments, including PHAs. In these States, detailed procedures are provided for nearly all key aspects of public contracting ranging from types of specifications to contract administration.

13.4 Local Law

Some local governments pass laws applicable to public housing contracts, others do not.

- A. In cases where State procurement laws do not specifically apply to PHAs, local government laws on public contracts should be consulted and PHAs should establish their policy and procedures based on the most stringent requirements, either Federal or local; and
- B. When applicable local laws, in addition to State law, exist on procurement, the most stringent of the three applies as long as the procurement conforms to Federal requirements.

Local jurisdictions frequently pass ordinances on specific construction practices and bonding requirements that a PHA must follow in addition to any State or local laws as long as they conform to Federal requirements.

13.5 Guidance on State and Local Procurement Laws

- A. The complex structure of Federal, State, and local laws pertaining to procurement and contracting activities (including applicable labor rates) requires that a PHA have

a comprehensive understanding of the combination of rules and regulations with which it must comply. A PHA's procurement policy and procedures must incorporate and reflect the relationship between each set of laws and procurement practices. To properly carry out the procurement function and ensure compliance with all applicable Federal, State, and local procurement regulations, PHAs should take the following steps:

- B. Create a procurement resource center that includes copies of all applicable laws and regulations. Update those resources as necessary. Consult the following to locate applicable Federal, State, and local documents:
 - 1. www.hudclips.org
 - 2. www.statelocalgov.net;
 - 3. The state legislation that creates your state's Housing Authorities (State enabling legislation);
 - 4. State procurement laws, State procurement codes, or State statutes pertaining to contracting and procurement;
 - 5. Local government laws on public contracts;
 - 6. Most recent State or local prevailing wage rates; and
 - 7. Most recent Davis-Bacon rates for your area (www.wdol.gov); and
 - 8. The current HUD Maintenance Wage Decision (HUD-52158) for the PHA.
- C. Ensure that PHA staff involved in contracting and procurement are familiar with all Federal and State laws (or regulations) and local ordinances relating to procurement activities.
- D. Before submitting a policy for adoption by the Board, it is advisable to consult with your legal counsel and/or HUD Field Counsel to ensure that policy language adequately covers all applicable rules. Update the policy as pertinent regulations change.
- E. Tailor an existing procurement policy (or develop a new procurement policy) that reflects the mix of all procurement laws applicable to your PHA.
- F. Develop detailed plans of implementation for procurement procedures and train the staff. Update plans as necessary.